



Cleveland State University
EngagedScholarship@CSU

Law Faculty Articles and Essays

Faculty Scholarship

2010

Healthcare Reform & the Missing Voice of Complementary and Alternative Medicine

Gwendolyn R. Majette

Follow this and additional works at: https://engagedscholarship.csuohio.edu/fac_articles



Part of the [Health Law and Policy Commons](#)

How does access to this work benefit you? Let us know!

This Article is brought to you for free and open access by the Faculty Scholarship at EngagedScholarship@CSU. It has been accepted for inclusion in Law Faculty Articles and Essays by an authorized administrator of EngagedScholarship@CSU. For more information, please contact research.services@law.csuohio.edu.

HEALTHCARE REFORM & THE MISSING VOICE OF COMPLEMENTARY AND ALTERNATIVE MEDICINE

Gwendolyn Roberts Majette*

I. INTRODUCTION	36
II. INTEGRATING CAM INTO THE US HEALTHCARE SYSTEM – A SYSTEM IN TRANSITION.....	40
III. HEALTHCARE REFORM 2008 & BEYOND.....	42
A. CAM Is Not Part of the Healthcare Reform Conversation: A Curious Situation	42
B. Healthcare Reform & Brief References to CAM	46
1. NCCAM	46
2. Obama Campaign on CAM Research & Integration with Conventional Medicine	46
3. McCain Campaign on CAM Integration with Conventional Medicine.....	49
4. American Chiropractic Association Statement on	

* Gwendolyn Roberts Majette is a recent 2009 master of laws graduate of Georgetown Law Center. While at Georgetown she was a Global Health Law Scholar. Ms. Majette has Capitol Hill experience. She was a fellow with the Health Subcommittee of the Ways and Means Committee of the United States House of Representatives and with Senator Debbie Stabenow. Ms. Majette has spent the bulk of her career teaching law in the legal academy. She received her J.D. from George Washington University School of Law and her B.B.A. from Emory University. Ms. Majette expresses sincere gratitude for the thoughtful guidance and support provided by Georgetown Professors Sherman Cohn and Peter Cohen, M.D. and her husband, Mario Majette, M.D., MPH. She is also grateful to all of the leaders in the complementary and alternative medicine field who agreed to be interviewed for this article.

National Health Care Reform	50
IV. MY RECOMMENDATIONS FOR CAM'S ROLE IN HEALTHCARE REFORM	51
A. Corporate Wellness Programs & CAM, a Good Fit with Obama-Biden's Healthcare Reform Plan.....	52
1. Obama-Biden's Health Care Plan – Prevention, Wellness & the Employer	53
2. Corporate Wellness Plans Provide Public Health Benefits	53
3. University of Arizona Corporate Health Improvement Program – An Effort to Include CAM Modalities in Corporate Wellness Programs	56
B. Legislative Efforts to Expand Corporate Wellness Programs	58
C. Combining Legislative Incentives for Corporate Wellness Programs and Recommendations for NCCAM	60
V. CONCLUSION	61

I. INTRODUCTION

The 2008 presidential campaign renewed interest in having a serious conversation about healthcare reform in the United States. At least eleven¹ of the democratic and republican candidates discussed healthcare reform and several of the democratic candidates, Hillary Clinton, John Edwards, and Barack Obama developed comprehensive healthcare reform plans. Former Senate Majority

¹ As of January 1, 2008, the leading Republican candidates were Rudy Giuliani, Mike Huckabee, John McCain, Mitt Romney, and Fred Thompson. The Democratic candidates were Joe Biden, Hilary Clinton, Chris Dodd, John Edwards, Barack Obama, and Bill Richardson. With respect to the Republican candidates, Rudy Giuliani, Mike Huckabee, and John McCain developed more extensive healthcare reform proposals. To review several charts that compare the healthcare proposals for the 2008 presidential candidates, visit the Kaiser Family Foundation [health08.org](http://www.health08.org) website. Kaiser Family Foundation [health08.org](http://www.health08.org) Analysis, <http://www.health08.org/sidebyside.cfm>. <http://www.health08.org/sidebyside.cfm> [hereinafter Kaiser].

Leader Tom Daschle proposed use of a federal health board to resolve the United States healthcare crisis.² And, soon after Senator Barack Obama was elected to be the forty-fourth President of the United States, Senator Max Baucus, Chairman of the Senate Finance Committee, issued a white paper entitled, "Call to Action Health Reform 2009."³ The Senate Finance Committee is one of the five congressional committees with jurisdiction over healthcare reform legislation.⁴ The primary focus of each plan was two-fold: (a) to reduce spiraling healthcare costs and (b) to provide access to quality affordable health insurance. Many plans also discussed methods to improve quality of care and to focus on prevention.⁵

A core deficit in all of the plans is a failure to address the role of complementary and alternative medicine (CAM) in the delivery of healthcare services in the United States and its role in reforming our healthcare system. Several studies have shown that a significant

² TOM DASCHLE ET AL., *CRITICAL: WHAT WE CAN DO ABOUT THE HEALTH-CARE CRISIS* (Thomas Dunne Books 2008). The Federal Health Board would be a quasi-governmental organization. It would be comprised of a board of governors (clinicians, health benefit managers, economists, research, and other respected experts); regional boards which focus on promoting best practices and quality of care locally; and staff analysts who analyze and produce research to make sound decisions. *Id.* Some of the core responsibilities of the board include expanding the federal employee health benefit plan to provide affordable health coverage to all Americans and promoting high value medical care. *Id.* The Federal Health Board would promote high value medical care through its own research, by helping to spread the latest evidenced-based treatment guidelines around the country; by suggesting research priorities for the National Institutes for Health; and by analyzing federal health data. *Id.*

³ U.S. SENATOR MAX BAUCUS, CHAIRMAN, SENATE FINANCE COMMITTEE, *CALL TO ACTION HEALTH REFORM 2009* (Nov. 12, 2008) [hereinafter *BAUCUS CALL TO ACTION*].

⁴ United States Senate Committee on Finance, Jurisdiction, <http://finance.senate.gov/sitepages/jurisdiction.htm>. The other Senate committee with jurisdiction is the Health, Education, Labor and Pension Committee. U.S. Senate Committee on Health, Education, Labor and Pension, About, http://help.senate.gov/about_2.htm. There are three committees in the House: The Committee on Ways and Means, The Energy and Commerce Committee, and The Committee on Education and Labor. See Jurisdiction of the Committee on Ways and Means, <http://waysandmeans.house.gov/About.asp?section=23>; Committee on Energy and Commerce, Jurisdiction, <http://energycommerce.house.gov/> (from the About the Committee menu, select Jurisdiction); Committee on Education and Labor, Jurisdiction, <http://edlabor.house.gov/about/jurisdiction>.

⁵ See Kaiser, *supra* note 1; *BAUCUS CALL TO ACTION*, *supra* note 3; *DASCHLE*, *supra* note 2.

percentage of people use CAM modalities to prevent future illness, to pursue wellness, or for health improvement.⁶ In 2007, thirty-eight percent of American adults used complementary and alternative medicine.⁷ In 2007, Americans spent \$33.9 billion dollars on CAM therapies.⁸

CAM is one approach that Americans use to preserve their health and treat illnesses.⁹ The Institute of Medicine (IOM) defines CAM as follows:

[CAM is] a broad domain of resources that encompasses health systems, modalities, and practices and their accompanying theories and beliefs, other than those intrinsic to the dominant health system of a particular society or culture in a given historical period. CAM includes such resources perceived by their users as associated with positive health outcomes. Boundaries within CAM and between the CAM domain and the domain of the dominant system are not always sharp or fixed.¹⁰

The National Center for Complementary and Alternative

⁶ COMMITTEE ON THE USE OF COMPLEMENTARY AND ALTERNATIVE MEDICINE BY THE AMERICAN PUBLIC, INSTITUTE OF MEDICINE, COMPLEMENTARY AND ALTERNATIVE MEDICINE IN THE UNITED STATES 51 (2005)[hereinafter IOM REPORT ON CAM]. Additionally, a 2007 survey of people fifty and older showed that 65% used CAM for overall wellness. AARP, NCCAM, ICR, COMPLEMENTARY AND ALTERNATIVE MEDICINE: WHAT PEOPLE 50 AND OLDER ARE USING AND DISCUSSING WITH THEIR PHYSICIANS, 6 (2007)[hereinafter AARP OLDER AMERICAN SURVEY].

⁷ CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR HEALTH STATISTICS, NATIONAL HEALTH STATISTICS REPORTS, COSTS OF COMPLEMENTARY AND ALTERNATIVE MEDICINE AND FREQUENCY OF VISITS TO CAM PRACTITIONERS: UNITED STATES, 2007 (July 30, 2009)[hereinafter COSTS OF CAM REPORT]. In 2002, use of complementary and alternative medicine among American adults ranged from 36% to 62% of the population. The higher rates of usage reflect the inclusion of prayer for healing and megavitamins as CAM therapies. THE NATIONAL CENTER FOR COMPLEMENTARY AND ALTERNATIVE MEDICINE, THE USE OF CAM IN THE UNITED STATES 2 (rev. 2007), available at <http://nccam.nih.gov/news/camstats/2007/camuse.pdf>. [hereinafter NCCAM USE REPORT]; STATISTICS OF CAM USE IN THE UNITED STATES 1, available at <http://nccam.nih.gov/news/camstats/2002/>.

⁸ COSTS OF CAM REPORT, *supra* note 7, at 3. In 1997, Americans spent between \$36-47 billion dollars on CAM therapies. NCAAM USE REPORT, *supra* note 7, at 4.

⁹ IOM REPORT ON CAM, *supra* note 6, at 55. CAM users often use CAM with conventional medicine.

¹⁰ IOM REPORT ON CAM, *supra* note 6, at 19.

Medicine (NCCAM) divides CAM modalities into five categories: “(1) alternative medical systems, (2) mind-body interventions, (3) biologically based treatments, (4) manipulative and body-based methods, and (5) energy therapies.”¹¹ Alternative medical systems “are built upon complete systems of theory and practice.”¹² Examples include Indian Ayurvedic, traditional Chinese medicine, and homeopathy.¹³ Mind-body interventions include techniques to enhance the mind’s ability to affect bodily function and symptoms.¹⁴ Meditation, yoga, and prayer are common mind-body techniques.¹⁵ Biologically based treatments include herbs, botanicals, vitamins, and minerals.¹⁶ Manipulative treatments are “based on manipulation or movement of one or more [body] parts.”¹⁷ Examples of manipulative treatments include message therapy and chiropractic and osteopathic manipulation.¹⁸ Energy medicine involves use of energy fields presumed to move from the master practitioner to the patient as a form of treatment.¹⁹

CAM is used more often by women, by people with higher education levels, by people who have been hospitalized in the past year and by former smokers.²⁰ For those fifty and older, CAM is more likely to be used by persons age fifty to sixty-four, those with higher household incomes, and those with more formal education.²¹ In general, CAM is most often used for pain (back, neck, head, or

¹¹ *Id.* at 18.

¹² NCCAM USE REPORT, *supra* note 7, at 1

¹³ IOM REPORT ON CAM, *supra* note 6, at 18.

¹⁴ NCCAM USE REPORT, *supra* note 7, at 1

¹⁵ NATIONAL CENTER FOR COMPLEMENTARY AND ALTERNATIVE MEDICINE, EXPANDING HORIZONS OF HEALTH CARE: STRATEGIC PLAN 2005 - 2009, 2, <http://nccam.nih.gov/about/plans/2005/index.htm> [hereinafter NCCAM STRATEGIC PLAN].

¹⁶ *Id.*

¹⁷ See NCAAM USE REPORT, *supra* note 7, at 2.

¹⁸ NCCAM STRATEGIC PLAN, *supra* note 15, at 2.

¹⁹ *Id.*

²⁰ NCCAM USE REPORT, *supra* note 7, at 2.

²¹ AARP OLDER AMERICAN SURVEY, *supra* note 6, at 5.

joint aches), "colds; anxiety or depression; gastrointestinal disorders; or sleeping problems."²² The CAM therapies most often used in the fifty and older group are massage therapy, chiropractic manipulation, and herbal products or dietary supplements.²³

Given the high prevalence of CAM use by Americans, coupled with the emphasis placed on prevention in many of the healthcare reform proposals, this article argues that CAM should play a role in the healthcare reform conversation. This article will proceed in four parts. Part I provides the background information on CAM including its definition, CAM use, and its cost. This section also broadly outlines the contours of the early healthcare reform proposals, those in existence as of January 2009. Part II describes how CAM would ideally be integrated into the United States healthcare system. Part III outlines the reasons CAM has been excluded from the healthcare reform debate and describes the brief references made to CAM in the healthcare reform conversation. Part IV concludes by identifying an area where CAM can positively contribute to healthcare reform initiatives and recommends ways that evidenced-based CAM modalities can support efforts focused on prevention and wellness through corporate wellness programs.

II. INTEGRATING CAM INTO THE US HEALTHCARE SYSTEM – A SYSTEM IN TRANSITION

In 2005, the Institute of Medicine set forth the standard for the ideal type of care that would be provided in the United States.²⁴ Healthcare practitioners will provide

"evidence-based, comprehensive care that encourages a focus on healing, recognizes the importance of compassion and caring, emphasizes the centrality of relationship-based care, encourages patients to share in decision-making about therapeutic options, and promotes choice in care that can include CAM therapies where

²² NCCAM USE REPORT, *supra* note 7, at 3.

²³ AARP OLDER AMERICAN SURVEY, *supra* note 6, at 5.

²⁴ IOM REPORT ON CAM, *supra* note 6, at 222.

appropriate.”²⁵ This standard reflects the concept of integrative medicine. Integrative medicine is “a clinical approach that combines the strengths of conventional and alternative medicine with a bias toward options that are considered safe, and which, upon review of the available evidence, offer a reasonable expectation of benefit to the patient.”²⁶ A major barrier to attainment of an integrated medical system is the status of research on the efficacy and safety of CAM modalities.²⁷ “Much of the research to support evidence-based information is inconclusive, non-existent, not rigorous, or [in progress].”²⁸

Attainment of an integrative medical system will be a long term endeavor, a marathon.²⁹ Some argue for slow and conditional integration while CAM modalities are being tested for efficacy.³⁰ Others, like the Deputy Director for NCCAM, believe that the appropriate way to integrate CAM is to be *open to the possibility* that a CAM modality might provide health benefits.³¹ Thus, one must wait for the evidence to develop to confirm or deny the benefits of a CAM modality before it is integrated.³²

There is growing evidence of efficacy for some CAM modalities.

²⁵ *Id.*

²⁶ IOM REPORT ON CAM, *supra* note 6, at 210.

²⁷ NCCAM STRATEGIC PLAN, *supra* note 15, at 11.

²⁸ *Id.* One barrier to CAM research is limited funding. Most funding for CAM trials comes from public resources because private industry rarely funds research on CAM due to the low ability to patent natural products or CAM therapies. *Id.* In the absence of a patent, private companies are unlikely to see a return on the research investment. IOM REPORT ON CAM, *supra* note 6, at 145; Robert M. Sade, *Complementary and Alternative Medicine: Foundations, Ethics, and Law*, 31 J.L. MED. & ETHICS 183, 186 (2003) (“new therapies that are neither commercially nor politically attractive have difficulty attracting sponsors and tend not to be studied”).

²⁹ Richard L. Hahin, Carol H. Pontzer, and Margaret A. Chesney, *Racing Toward Integration of Complementary and Alternative Medicine: A Marathon or a Sprint*, 24 HEALTH AFF. 991, 993 (2005) (All of the authors worked for NCCAM at the time this article was written).

³⁰ *Id.*

³¹ Telephone Interview with John (Jack) Killen, Jr., M.D., Deputy Director, National Center for Complementary and Alternative Medicine, in Bethesda, Maryland (Nov. 14, 2008) [hereinafter Killen Interview].

³² *Id.*

For example, transcendental meditation is being used for patients with heart disease and hypertension as a means to lower stress.³³ Another example is the use of acupuncture and chiropractic care for chronic back pain.³⁴

III. HEALTHCARE REFORM 2008 & BEYOND

For those paying attention to the discussion on healthcare reform, it was curious to notice that CAM was not a part of the analysis.

A. CAM Is Not Part of the Healthcare Reform Conversation: A Curious Situation

I believe that complementary and alternative medicine is not a part of the healthcare reform conversation for several reasons. One reason is the credibility issue. The unsubstantiated and occasionally outlandish claims by some CAM supporters, including herbal medicine manufacturers and others, undermine the credibility for CAM modalities that are shown to be clinically effective or have the possibility of being proven clinically effective.³⁵ More self-regulation among the CAM professionals to protect the integrity of the profession could be a means used to address this problem. Additionally, there is no obvious place where CAM fits into the current healthcare reform dialogue on concerns about the costs of

³³ Mary Ruggle, *Mainstreaming Complementary Therapies: New Directions in Health Care*, 24 HEALTH AFF. 980, 987 (July/August 2005).

³⁴ *Id.*; Killen Interview, *supra* note 31.; Roger Chou et al., *Diagnosis and Treatment of Low Back Pain: A Joint Clinical Practice Guideline from the American College of Physicians and the American Pain Society*, 147 ANN. INTERN MED. 478, 484-87 (2007).

³⁵ WHITE HOUSE COMMISSION ON COMPLEMENTARY AND ALTERNATIVE MEDICINE POLICY, FINAL REPORT, Appendix G, Statement from Commissioners (Letter From Joseph Fins and Tieraona Low Dog) at 229 (March 10, 2002) [hereinafter WHITE HOUSE CAM REPORT – Ltr from Drs. Fins and Low Dog]. A similar idea was previously echoed in a Letter of Dissent to the White House Commission on Complementary and Alternative Medicine Policy Report (2002) by two commissioners, Drs. Joseph Fins and Tieraona Low Dog. In their letter, Drs. Fins and Low Dog criticize the report for its failure to present a nuanced analysis of CAM modalities which would distinguish between those proven to be safe and effective from those that are improbable or fraudulent. *Id.*

healthcare and the means to provide affordable healthcare coverage to the uninsured. And to the extent that CAM does fit into the conversation, its impact might not be as substantial as some of the other recommendations that are a part of that dialogue.

While one might argue that CAM can help lower costs, the issue here is again a lack of sufficient data to support this assertion. In 2005, several leaders involved in CAM research and policy noted that few studies on cost-effectiveness³⁶ existed and that research with respect to CAM was in its early stage of development.³⁷ Even three years later, an executive with one of the largest companies facilitating the integration of CAM products, services, and education programs into benefit plans, concluded that there are currently few studies on the true cost-effectiveness of most CAM procedures.³⁸ Moreover, as of 2008, NCCAM's research on cost effectiveness is still in its infancy stages. According to the Deputy Director for NCCAM, it recently put out a request for applications to tap into existing sources of information from third-party payers on cost-effectiveness and is exploring an initiative to study CAM approaches to chronic back pain.³⁹ There are many reasons to account for the dearth of cost-

³⁶ IOM REPORT ON CAM, *supra* note 6, at 148; Ruggle, *supra* note 33, at 986-87. Cost-effectiveness is an economic analysis of the costs associated with the treatment outcome. It can include results showing that a treatment offers good value for the money as well as cost savings. Ruggle, *supra* note 33, at 986-87.

³⁷ Ruggle, *supra* note 33, at 985; David Eisenberg, *The Institute of Medicine Report on Complementary and Alternative Medicine In the United States – Personal Reflections on Its Content and Implications*, 11 ALTERNATIVE THERAPIES 10, 12 (May/June 2005); *see also*, IOM REPORT ON CAM, *supra* note 6, at 142, 143, 146, 148.

³⁸ Interview with Douglas Metz, Executive Vice President and Chief Health Services Officer, American Specialty Health, Inc. (January 16, 2009) [hereinafter Metz Interview]. Metz, a chiropractic physician, has over 27 years of CAM and healthcare management experience. At American Specialty Health (ASH), Dr. Metz oversees the clinical aspects of the organization, including health services, research, clinical care management, and clinical quality management. "Prior to joining ASH, Dr. Metz served as the medical director of health services operations for Aetna health Plans, Middletown, CT." American Specialty Health, Management Team, <http://www.ashcompanies.com/AboutUs/Management/Default.aspx?bio=3>.

³⁹ Killen Interview, *supra* note 31. Additionally, according to a December 2008 report, additional research on the cost-effectiveness of CAM will be available when NCCAM and the CDC National Center for Health Statistics complete their research on "CAM costs and spending" using the data from the 2007 National Health Interview Survey. *See* NCAAM

effectiveness research, including the lack of adequate numbers of trained research experts in the CAM field to study cost-effectiveness and the lack of available funds to conduct the research.⁴⁰ According to one CAM expert, NCCAM has provided "almost no funding to look at the costs of CAM treatment."⁴¹ Additional factors that have hindered research on cost-effectiveness include "a lack of consistency of treatments, a lack of standardized coding, and defects in [execution of the] clinical trials."⁴²

Leading figures involved in setting policy in the area of CAM offer a variety of different reasons for the absence of a conversation about CAM in the mainstream discussions on healthcare reform. Jack Killen, the Deputy Director of NCCAM, argues that CAM is not a major part of the healthcare reform conversation because it is not a big driver of overall healthcare costs and is thus not a concern of such significance such that it gets on the radar screen.⁴³ Dr. Killan's rationale was echoed by Dr. Kenneth R. Pelletier, Director of Corporate Health Improvement Program and Clinical Professor of

USE REPORT, *supra* note 7, at 4.

⁴⁰ Metz Interview, *supra* note 38.

⁴¹ Telephone Interview with John Weeks, integrative medicine expert, in Seattle, Washington (November 14, 2008) [hereinafter Weeks Interview]. Weeks further notes that since 2001, CAM research has not focused on costs and the level of funding in this area has not increased. John Weeks has worked on complementary and alternative medicine issues as a writer, organizer and consultant for over 26 years. Currently Weeks is publisher-editor of the Integrator Blog News & Reports (www.theintegratorblog.com), executive director for the Academic Consortium for Complementary and Alternative Health Care (www.accahc.org) and integrative medicine leader for the Institute for Health and Productivity Management (www.ihpm.org). He has published articles in various journals including *Medical Economics*, *The Journal of Complementary and Alternative Medicine*, and *Alternative Therapies in Health and Medicine*. He has also published chapters in books, such as his chapter titled *Complementary and Alternative Medicine Integration: Trends, Structures and Challenges* in the fourth edition of *The Managed Health Care Handbook*. He has also been called upon to testify or make presentations to governmental organizations such as the White House Commission on Complementary and Alternative Medicine and the Washington State Office of the Insurance Commissioner. See http://theintegratorblog.com/site/index.php?option=com_content&task=view&id=17&Itemid=36; <http://www.whccamp.hhs.gov/th.html>; <http://www.insurance.wa.gov/publications/health/camrpt.pdf>.

⁴² IOM REPORT ON CAM, *supra* note 6, at 148.

⁴³ Killen Interview, *supra* note 31.

Medicine at the University of Arizona.⁴⁴ Dr. Pelletier further notes that the issues of healthcare reform are so large that CAM is low on the priority list.⁴⁵ He believes that the first priority should be to reduce the number of uninsured so that they may have access to healthcare and the second priority should be to take steps to prevent Medicare from going bankrupt.⁴⁶

Dr. David Riley, Clinical Associate Professor at the University of New Mexico Medical School and Member of the Board of Trustees of the American Holistic Medical Association, offers a different rationale for the exclusion of CAM from the dialogue on healthcare reform. Two of his reasons are: CAM's perception as an "add-on benefit" to conventional medical care and the lack of sufficient conventional research showing CAM's effectiveness.⁴⁷ Moreover, efforts to increase access to an add-on benefit are less compelling when forty-five million uninsured people do not have access to the basic care that most agree they should have.⁴⁸

The final reason that CAM is excluded from the healthcare reform discussion is provided by John Weeks, a recognized expert in alternative medicine.⁴⁹ Mr. Weeks argues that CAM is not a part of the conversation because, with the exception of chiropractors, the licensed CAM professionals have not organized themselves well enough to be players in the political dialogue at the federal level.⁵⁰

⁴⁴ Kenneth R. Pelletier, PhD, MD, is Director of Corporate Health Program, University of Arizona, and Clinical Professor of Psychiatry, Department of Psychiatry at the University of California School of Medicine, San Francisco, <http://integrativemedicine.arizona.edu/about/directors.html?id=Pelletier>; Telephone Interview with Kenneth R. Pelletier, PhD, MD, in San Francisco, Cal. (Oct. 31, 2008) [hereinafter Pelletier Interview]. Dr. Pelletier did note that some federal congressional staffers are receptive to a conversation about CAM if questioned about the issue. *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Telephone Interview with David Riley, M.D., Clinical Associate Professor, University of New Mexico Medical School, Member of the Board of Trustees, American Holistic Medical Association, Founder, Integrative Medicine Institute in Europe (October 31, 2008) [hereinafter Riley Interview].

⁴⁸ *Id.*

⁴⁹ Weeks Interview, *supra* note 41.

⁵⁰ Weeks Interview, *supra* note 41. Another reason for the lack of CAM's voice is that many

He further notes that most non-medical CAM providers represent a relatively small field of healthcare providers who practice in the underfunded universe of healthcare providers.⁵¹

B. Healthcare Reform & Brief References to CAM

1. NCCAM

NCCAM was created with a mission to explore CAM practices via rigorous science, to train CAM researchers, and to disseminate authoritative information to the public and to the healthcare profession.⁵²

According to the Deputy Director for NCCAM, Dr. Jack Killen, CAM's role in healthcare reform should be the same as its role in health and healthcare generally.⁵³ CAM may play an important role in treating some chronic painful conditions. The research to date shows that pain is one of the primary motivators for people to use CAM. Another area where CAM may play an important role in the delivery of healthcare is for difficult conditions that Western medicine finds difficult to manage.⁵⁴

2. Obama Campaign on CAM Research & Integration with

licensed CAM professional organizations focus their efforts on other initiatives such as obtaining or expanding licensure and addressing budgetary constraints. *Id.* Other CAM experts provide a word of caution to CAM professionals regarding their role in healthcare reform. They note that if CAM-practitioners try to overreach with respect to their role in providing solutions to the problems with the United States' healthcare system, then they will not be a part of the solution. The role of CAM practitioners will be defined by their scope of practice . . . and their ability to demonstrate how the skills from their training will help improve healthcare.

⁵¹ *Id.*

⁵² See NCAAM Strategic Plan, *supra* note 15, at iv-vii. In this strategic plan, the second one for NCCAM, there were eight areas of focus for research: (1) mind-body medicine; (2) biologically based practices; (3) manipulative and body-based practices; (4) energy medicine; (5) whole medical systems; (6) health services research (market impact, organization, and delivery); (7) international health research (traditional/indigenous health services and CAM abroad); and (8) ethical, legal, and social implications of CAM. *Id.*

⁵³ Killen Interview, *supra* note 31.

⁵⁴ *Id.*

Conventional Medicine

The Obama presidential campaign acknowledged that it had not addressed the issue of CAM in its healthcare plan.⁵⁵ Questions posed to the campaign revealed Obama's position on the role of CAM in healthcare reform. CAM research would be positively impacted because the campaign favored an increase in the research budget for NIH to conduct basic research.⁵⁶ Such an increase would provide for the possibility of increased funding to NCCAM which conducts ongoing research on CAM as a center at NIH. With respect to integration of CAM with conventional medicine, that could occur through the design of the basic benefit package that would be a part of Obama's initiatives to provide affordable health insurance. The model for the basic benefit package would be the federal employee health benefit plan.⁵⁷ To the extent that the federal employee health

⁵⁵ Dora Hughes, Health Policy Advisor for Barack Obama, Innovation & the Elections: Presidential Perspectives on Health Scientists and Engineers for America, Transcript of Presidential Candidate Forum at George Washington University, 43 (September 18, 2008), available at http://www.kaisernetwork.org/health_cast/uploaded_files/91808_h08_sea_transcript.pdf. [hereinafter Hughes at GWU presidential candidate forum]. After the election, in early December, the Obama transition team encouraged Americans to hold Healthcare Community Discussions. See Change.gov, The Office of the President-elect, <http://change.gov/page/s/hcdiscussion>. During these discussions, participants were directed to address seven questions. Two are directly related to the focus of this paper. The sixth question begins with a list of examples of the types of preventive services Americans should receive - mammography screening, flu shots, and cholesterol screening. It goes on to ask, "Have you gotten the prevention you should have? If not, how can public policy help?" The seventh question asks, "How can public policy promote healthier lifestyles?" OBAMA-BIDEN TRANSITION PROJECT, PARTICIPANT GUIDE FOR HEALTH CARE COMMUNITY DISCUSSIONS 3 (2008), <http://change.gov/page/-/Health%20Care%20Community%20Discussion%20Participant%20Guide.pdf>. In response to the Obama-Biden request, several discussions were hosted by individuals interested in CAM and healthcare reform. One discussion dealt with effective ways of adding integrative medicine to the national healthcare agenda. Additionally, Dr. Wayne Jonas, President/CEO, Samueli Institute, hosted a community discussion which focused on a wellness initiative for the nation, a white paper that provides guidance on wellness and integrative healthcare practices that can be incorporated into health reform efforts. Integrator Action Bulletin: Obama's Call, IOM Summit Registration, Integrative Healthcare Symposium Panels, available at http://theintegratorblog.com/site/index.php?option=com_content&task=view&id=515&Itemid=189.

⁵⁶ Hughes at GWU presidential candidate forum, *supra* note 55, at 43-44.

⁵⁷ *Id.*

benefit plan currently covers CAM,⁵⁸ so would the basic benefit package. Additionally, because then-Senator Obama was described as having an open minded attitude and willingness to genuinely look at data, he would presumably examine the evidence for all types of healthcare.⁵⁹ Finally, the campaign recognized that Western medicine, "is not a panacea for so many medical conditions and illnesses," so to the extent that effective therapy could be identified in other areas, that would be something that is considered.⁶⁰

The Obama presidential campaign provided further guidance of the role of CAM in its healthcare reform efforts through its response to a 2008 Federal Election Candidate Questionnaire from the American Chiropractic Association.⁶¹ In his response, Senator Obama reemphasized his intention to do more to "instill a culture of

⁵⁸ There is no standard benefit package required for the federal employee health benefit plan (FEHBP). All plans must cover basic hospital, surgical, physician, emergency care, and prescriptions. 5 U.S.C. § 8904 (2007)). Several health plans offered through the federal employee health benefit plan for 2009 cover CAM therapies. Aetna Health Fund for Maryland offers non-FEHB benefits. These benefits include the "natural products and services program." Through this program, members "receive discounts from participating professionals on chiropractic manipulation, acupuncture, massage and nutritional counseling." Members "can also save on the purchase of vitamins, herbal and nutritional supplements, and on health-related products such as aromatherapy." See 2009 Aetna HealthFund at 116, <http://www.opm.gov/insure/health/planinfo/2009/brochures/73-828.pdf>. A plan offered by Kaiser Permanente also covers certain chiropractic and acupuncture services. It covers chiropractic services for neuromusculoskeletal disorders and acupuncture for chronic pain and nausea. See The 2009 Kaiser Foundation Health Plan of the Mid-Atlantic at 33-34, *available at* <http://www.opm.gov/insure/health/planinfo/2009/brochures/73-047.pdf>. Blue Cross and Blue Shield also offers a product that covers chiropractic and acupuncture services. See 2009 Blue Cross and Blue Shield Service Benefit Plan at 47-48, *available at* <http://www.opm.gov/insure/health/planinfo/2009/brochures/71-005.pdf>.

⁵⁹ Hughes at GWU presidential candidate forum, *supra* note 55.

⁶⁰ *Id.*

⁶¹ Senator Obama's Response to the American Chiropractic Association 2008 Federal Election Candidate questionnaire, *available at* http://acatoday.org/userImages/File/Obama_Response_Letter.pdf. [hereinafter Obama Response-Am. Chiropractic Ass'n.]. The American Association for Health Freedom, another CAM association, also submitted a presidential questionnaire to all of the presidential candidates in June 2007, but they were unable to post their results because they did not get a good response. Neither campaigns, Obama or McCain, responded. E-mail from Jessica Foster, Marketing Coordinator, American Association for Health Freedom, to Gwendolyn Majette, Georgetown LL.M. Candidate (October 28, 2008)(on file with author).

wellness" in America.⁶² He further recognized the "important and valuable contributions to expanding access to preventive services and strengthening public health" that chiropractors have made, and stated that chiropractors would be "integral to the effectiveness" of efforts he would make in that area.⁶³ Obama also provided that his public insurance plan would include comprehensive coverage, including essential medical benefits such as mental healthcare, maternity care and preventive services.⁶⁴ Such coverage would include "[a]ny benefit that is evidence-based or meets the current accepted standard of care," including chiropractic services.⁶⁵

3. McCain Campaign on CAM Integration with Conventional Medicine

The McCain presidential campaign was also silent on the topic of CAM in its healthcare plan. Even when questioned about CAM research, the campaign remained silent.⁶⁶ However, with respect to integrating CAM with conventional medicine, the McCain campaign would facilitate access to CAM by allowing Americans the choice to go across state lines to purchase health insurance plans that offer coverage for CAM services, including chiropractic services.⁶⁷ McCain would accomplish this by eliminating the regulations that facilitate state regulation of insurance and allow for the creation of a national insurance market.⁶⁸ McCain further stated that his healthcare reform efforts would also focus on prevention and wellness and create "new treatment models to better manage chronic

⁶² See Obama Response-Am. Chiropractic Ass'n., *supra* note 61.

⁶³ *Id.*

⁶⁴ *Id.* at 2.

⁶⁵ *Id.*

⁶⁶ Jay Khosla, Health Policy Advisor for John McCain, *Innovation & the Elections: Presidential Perspectives on Health Scientists and Engineers for America*, 44-45 (Sept. 18, 2008).

⁶⁷ Letter from John McCain to American Chiropractic Association (October 24, 2008) (on file with author), available at <http://acatoday.org/userImages/File/McCainStatement.pdf> [hereinafter McCain Chiropractic Ltr.].

⁶⁸ Senator John McCain, Remarks at the University of South Florida, Lee Moffitt Cancer Center & Research Institute (April 29, 2008) (transcript available at <http://www.presidency.ucsb.edu/ws/index.php?pid=77195#>).

care diseases in a more effective and patient-centric manner.”⁶⁹ Moreover, chiropractors would “play an important role in [McCain’s] healthcare reform agenda.”⁷⁰

4. American Chiropractic Association Statement on National Health Care Reform

In July 2007, the American Chiropractic Association (ACA) issued a statement on National Health Care Reform.⁷¹ The core ideas expressed by that statement include agreeing with the need to extend healthcare access to the 45 million uninsured Americans, reducing the current high cost of healthcare, and significantly improving the quality and effectiveness of healthcare that is currently being delivered.⁷² The association does not provide specifics on how to achieve these three goals.⁷³ The association, like many allopathic providers,⁷⁴ supports the need to move to a comprehensive focus on wellness and disease prevention. Such efforts would include “early disease detection and prevention, positive lifestyle changes, proper

⁶⁹ McCain Chiropractic Ltr., *supra* note 67.

⁷⁰ *Id.* The McCain letter does not specify the particular role of chiropractors in his agenda. *Id.*

⁷¹ American Chiropractic Association Statement on National Health Care Reform (July 10, 2007), available at http://acatoday.org/pdf/HealthReformStatement_FINAL_Jul07.pdf [hereinafter ACA HC Reform Statement].

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Public health, an integral part of medicine, has focused on health promotion and prevention for decades. WHITE HOUSE CAM REPORT – Ltr from Drs. Fin and Low Dog, *supra* note 35, at 231. “Preventive Medicine is the specialty of medical practice that focuses on the health of individuals, communities, and defined populations. Its goal is to protect, promote, and maintain health and well-being and to prevent disease, disability, and death.” See American Board of Preventive Medicine, available at <http://www.abprevmed.org/aboutus.cfm>. Other organizations, like Partnership for Prevention is also dedicated to helping Americans prevent disease and injury. Partnership for Prevention is a nonprofit organization whose mission is “to improve the health of all Americans by increasing the priority of disease prevention and health promotion. [It] provides evidenced based guidance to health professionals, policy makers, and employers on a variety of prevention related topics including tobacco, nutrition, physical activity, immunizations, and worksite health promotion.” Partnership for Prevention Briefing Materials, *How to Save 100,000 Lives*, (briefing Sept. 20, 2007) Washington, DC (on file with author).

diet and exercise, . . . and other efforts to help people improve their overall health status and quality of life.”⁷⁵ Chiropractors would play a role in this shift because they “employ a holistic approach to the treatment of illness, with an appropriate emphasis on wellness concepts that involve diet, nutrition, exercise, and positive lifestyle changes such as smoking cessation measures.”⁷⁶ The association also noted its role in helping to treat back pain which it estimates costs society over \$50 billion dollars annually.⁷⁷ According to the ACA, chiropractic services help society by improving job performance, productivity, and quality of life.⁷⁸

IV. MY RECOMMENDATIONS FOR CAM’S ROLE IN HEALTHCARE REFORM

“The Obama-Biden Plan to Lower Health Care Cost and Ensure Affordable, Accessible Health Care to All” is designed to control the skyrocketing healthcare costs, reduce the number of uninsured, and invest in prevention and the public’s health.⁷⁹

⁷⁵ ACA HC Reform Statement, *supra* note 71, at 2.

⁷⁶ *Id.*

⁷⁷ *Id.* at 3.

⁷⁸ *Id.* at 4.

⁷⁹ Barack Obama and Joe Biden’s Plan to Lower Health Care Costs and Ensure Affordable, Accessible Health Care Coverage for All, *available at* <http://www.barackobama.com/pdf/issues/HealthCareFullPlan.pdf> (last visited Nov. 14, 2008) [hereinafter Obama-Biden Health Plan]. President Barack Obama articulated similar goals in his frameworks for healthcare reform: The President’s 8 Principles for Health Care Reform issued in February 2009 and The Obama Plan for Stability & Security for All Americans issued in September 2009. The 8 principles are designed to ensure that healthcare reform proposals: (1) protect families financial health by ensuring that people do not have to file bankruptcy because they are ill; (2) make health coverage affordable by eliminating wastes in the system; (3) aim for universality by putting America on a path to provide health coverage to all; (4) provide portability of coverage to those that change jobs or lose coverage; (5) guarantee choice of health plans and physicians; (6) invest in prevention and wellness to address the high costs associated with illness that is a result of poor diet, lack of exercise, smoking and failure to obtain preventive treatments that can detect diseases at early stages when they are more curable; (7) improve patient safety and quality of care; and (8) maintain the long-term fiscal sustainability of our healthcare system by not increasing the deficit, addressing the increasing costs the of healthcare system, and identifying revenues to support healthcare reform measures. OFFICE OF MGMT. & BUDGET,

A. Corporate Wellness Programs & CAM, a Good Fit with Obama-Biden's Healthcare Reform Plan

CAM can play an important role in healthcare reform efforts, which are designed to lower the cost of healthcare by focusing on wellness and prevention as a means to protect the public's health.⁸⁰ One area that is ripe for CAM involvement is the inclusion of evidenced-based CAM modalities in corporate wellness programs.⁸¹

EXECUTIVE OFFICE OF THE PRESIDENT, A NEW ERA OF RESPONSIBILITY: RENEWING AMERICA'S PROMISE at 27 - 28 (2009), http://www.whitehouse.gov/omb/assets/fy2010_new_era/A_New_Era_of_Responsibility2.pdf [hereinafter PRESIDENT'S 8 PRINCIPLES FOR HC REFORM]. Similarly, the Obama Plan for Stability and Security for All Americans benefits insured individuals by providing more stability and security to enable them to keep the coverage they have; benefits uninsured individuals by providing them with access to quality, affordable choices of healthcare coverage; and benefits all Americans (individuals, families, businesses, and government) by creating a healthcare system that controls the costs of healthcare. THE WHITE HOUSE-PRESIDENT BARACK OBAMA, THE OBAMA PLAN FOR STABILITY AND SECURITY (2009), http://www.whitehouse.gov/issues/health_care/plan. [hereinafter OBAMA PLAN FOR STABILITY & SECURITY].

⁸⁰ My original November 2008 recommendations about the role of CAM in the healthcare reform conversation as articulated in this article are prophetic and fill a void in the healthcare reform debate. Prior to the Senate HELP Committee's congressional hearings on integrative medicine in late February 2009, there was little mention of CAM in the healthcare conversation. *See supra* Part III.B. The HELP Committee hearings focused on the following: (1) the need to transform the U.S. healthcare system to focus on health and wellness; (2) the need for executive level leadership to develop and coordinate federal policy on integrative healthcare; (3) the definition of the integrative healthcare concept; and (4) initiatives by famous integrative medicine physicians like Dr. Mehmet C. Oz and Dr. Andy Weil on steps individuals can take to improve their health through healthy living. However, more recent healthcare reform initiatives at the federal level fail to mention CAM. Neither the President's Plan for Stability and Security, nor the legislative language of 2 of the 3 federal bills on healthcare reform introduced in June and September 2009 explicitly mention CAM. *See* OBAMA PLAN FOR STABILITY & SECURITY *supra* note 79; America's Affordable Health Choices Act, H.R. 3200, 111th Cong. (2009); SEN. MAX BAUCUS CHAIRMAN OF THE COMMITTEE ON SENATE FINANCE, CHAIRMAN'S MARK AMERICA'S HEALTHY FUTURE ACT OF 2009 (Sept. 2009). Only one healthcare reform bill, the HELP Senate Committee's Affordable Health Choices Act, contains a few explicit references to CAM and integrative medicine. The overall goal of these provisions is to ensure that CAM providers are recognized as healthcare providers within the U.S. Healthcare system and that integrative medicine is recognized as a legitimate model to deliver healthcare. Affordable Health Choices Act, S.____, 111th Cong. §§ 2713, 212, 301, 327, and 411 (2009).

⁸¹ As discussed previously, the healthcare reform proposal of presidential candidate Barack Obama, the Obama-Biden Plan to Provide Affordable, Accessible Health Care to All, is silent on the role of CAM in healthcare reform. *See supra* note 55 and accompanying text. And this silence continues in President Obama's healthcare reform framework. Neither

1. Obama-Biden's Health Care Plan - Prevention, Wellness & the Employer

The Obama-Biden Health Care Plan includes a promise to expand and reward employer efforts to promote prevention and strengthen public health through “worksite health promotion programs, onsite clinical preventive services[,] . . . nutritious foods in cafeterias and vending machines, . . . exercise facilities[,] . . . [and the selection of] insurance plans that cover preventive services for employees.”⁸² Such a promise helps to fulfill the Healthy People 2010 objective to have three-fourths of the United States employers, regardless of size, volunteer to offer a comprehensive employee health promotion program.⁸³ By supporting employer efforts to improve employee health, the Obama-Biden Health Care Plan recognizes that illness and disability reduce workforce productivity and constitute an additional drain on business coffers.⁸⁴

2. Corporate Wellness Plans Provide Public Health Benefits

“The U.S. business community has the largest economic stake ever in promoting and maintaining workforce health.”⁸⁵ In 2007, total annual healthcare spending in the United States was estimated to be \$2.2 trillion.⁸⁶ In 2003, the U.S. spent \$1.7 trillion on healthcare costs and in 1987–2000, private business bore one-quarter of the healthcare expenditures.⁸⁷ For this reason, some experts say that

President Obama’s 8 principles for healthcare reform nor the Obama Plan for Stability & Security for All Americans address the role of CAM or integrative medicine in healthcare reform. See PRESIDENT’S 8 PRINCIPLES FOR HC REFORM, *supra* note 79; OBAMA PLAN FOR STABILITY & SECURITY, *supra* note 79.

⁸² Obama-Biden Health Plan, *supra* note 79, at 7

⁸³ US DEPT. OF HEALTH AND HUMAN SERVICES, HEALTHY PEOPLE 2010: VOL. 1, 7-18 (2nd ed. 2000), available at <http://www.healthypeople.gov/Document/pdf/Volume1/07Ed.pdf>

⁸⁴ Obama-Biden Health Plan, *supra* note 79, at 7.

⁸⁵ Paul A. Simon & Jonathan E. Fielding, *Public Health and Business: A Partnership That Makes Cents*, 25 HEALTH AFF. 1029, 1030 (July/Aug. 2006).

⁸⁶ Micah Hartman et al., *National Health Spending in 2007: Slower Drug Spending Contributes to Lowest Rate of Overall Growth Since 1998*, 28 HEALTH AFF. 246 (Jan./Feb. 2009) (The authors are associated with the Centers for Medicare and Medicaid Services Office of the Actuary.).

⁸⁷ Simon & Fielding, *supra* note 85, at 1030.

employers are the only large stakeholders talking about health.⁸⁸

One core reason for "much of the growth in health care spending in the United States is linked to modifiable population risk factors such as obesity and stress."⁸⁹ "Chronic diseases . . . account for 75% of health care expenditures."⁹⁰ Employers "are tackling high medical costs by promoting wellness in their workforce."⁹¹ Some of the corporations that have established wellness plans include "Aetna Inc., CIGNA Corporation, Corning Incorporated, IBM Corporation, Northwestern Mutual Life Insurance Company, and Texas Instruments Incorporated."⁹² The wellness programs include a variety of strategies such as:

annual health risk assessments . . . (questionnaires and screening tests to identify risk factors for diseases); incentives for participation in risk-reduction programs; the provision of free preventive services at work; covering most or all of the cost of medications for certain chronic diseases; special programs for stressed-out or depressed workers; and opening on-site medical clinics, gyms, and pharmacies.⁹³

The programs tend to be effective when they are comprehensive,⁹⁴ tailored to the employee population, marketed, and supported by top management.⁹⁵

Employers not only pay billions of dollars in medical costs and

⁸⁸ Weeks Interview, *supra* note 41.

⁸⁹ Kenneth E. Thorpe, *The Rise in Health Care Spending And What to do About It*, 24 HEALTH AFF. 1436 (Nov./Dec. 2005).

⁹⁰ Steven H. Woolf, *The Power of Prevention and What it Requires*, 20 JAMA 2437 (May 2008).

⁹¹ Susan Okie, *The Employer as Health Coach*, 357 NEW ENG. J. MED. 1465 (Oct. 2007).

⁹² BUSINESS ROUNDTABLE, *Doing Well through Wellness: 2006-07 Survey of Wellness Programs at Business Roundtable Member Companies 3* (2007) (The Business Roundtable is an association of chief executive officers of leading U.S. companies).

⁹³ Okie, *supra* note 91 at 1466. "A 2007 survey of 573 [large] employers found that 72% were offering health risk assessments, 42 % had obesity-reduction programs, and 28% offered reduced health insurance premiums for participants in health-management programs." *Id.*

⁹⁴ Thorpe, *supra* note 89, at 1445 (n. 24). Comprehensive programs "include health awareness, education, screening, and behavior-change modules that include smoking, obesity, stress, fitness, nutrition, substance abuse, and mental health." *Id.*

⁹⁵ Okie, *supra* note 91, at 1466.

lost productivity, but they also pay millions for workers' compensation when their workforce is unhealthy.⁹⁶ Companies benefit from such programs because employees with multiple risk factors generally use more healthcare dollars than other workers.⁹⁷ These programs not only save companies money, but they reduce absenteeism, and increase productivity when employees adopt or maintain healthy behaviors.⁹⁸ For well designed health promotion programs, employers have saved on average \$3.93 for each dollar invested in the program.⁹⁹ Employers also save costs in other areas. Smoking cessation policies can reduce employers' healthcare costs, reduce staff turnover, reduce facility maintenance costs, and reduce health and fire insurance premiums.¹⁰⁰

Risk assessments often screen for conditions such as diabetes, heart disease, musculoskeletal disorders, asthma, and depression.¹⁰¹ Once a risk assessment is completed, employees are put into categories to determine what solutions may be used to prevent the onset of certain conditions.¹⁰² At some companies, employees whose risk assessment shows them at intermediate risk for a condition are advised to consider lifestyle changes; yet those with high risk are urged to initiate changes.¹⁰³ Employers also couple the assessments with low or no co-payments for preventive services or reduced co-payments on drugs used to manage chronic conditions to encourage

⁹⁶ Simon & Fielding, *supra* note 85, at 1030. For example, in 2000, "physical inactivity, obesity, and overweight adults in California cost the public and private sectors an estimated \$10.2 billion for medical care, \$338 million for workers' compensation, and \$11.2 billion in lost productivity." *Id.* A mere five percent improvement in physical activity and weight lost would bring an estimated savings of at least \$6 billion over five years. *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* Increasing productivity is important to combat the loss that results from *presenteeism* when employees with health problems continue to work but with diminished production. *Id.*

⁹⁹ Thorpe, *supra* note 89, at 1440. The design of the program is critical since "there have been few successful interventions used in health care to reduce weight, modify diets, and lower stress." *Id.*

¹⁰⁰ Simon & Fielding, *supra* note 85, at 1031.

¹⁰¹ *Id.*

¹⁰² Okie, *supra* note 91, at 1467.

¹⁰³ *Id.*

people to obtain preventive services and to take their medications to control their chronic illness.¹⁰⁴

3. University of Arizona Corporate Health Improvement Program – An Effort to Include CAM Modalities in Corporate Wellness Programs

The Corporate Health Improvement Program (CHIP)¹⁰⁵ at the University of Arizona is helping businesses and government agencies establish “health and medical care programs that will reduce their medical costs and enhance the health and productivity of their employees.”¹⁰⁶ CHIP is a “collaborative research and development program between the University of Arizona College of Medicine and select Fortune 500 companies” or governmental organizations that are using integrative medicine in their wellness programs.¹⁰⁷ The program “defines integrative medicine as healing-oriented medicine that takes account of the whole person (body, mind, and spirit), including all aspects of lifestyle. It emphasizes the therapeutic relationship and makes use of all appropriate therapies, both conventional and alternative.”¹⁰⁸ Integrative medicine incorporates conventional and alternative medicine that is supported by evidence of clinical effectiveness.¹⁰⁹

According to Dr. Kenneth R. Pelletier, PhD, MD, the Director of

¹⁰⁴ *Id.* at 1469.

¹⁰⁵ Arizona Center for Integrative Medicine, Corporate Health CHIP, <http://integrativemedicine.arizona.edu/chip/>.

¹⁰⁶ Pelletier Interview, *supra* note 44. Dr. Pelletier notes that wellness programs cost employers money in the short run, but in the long term save the employer money by increasing worker productivity and by improving company performance and financial viability. *Id.*

¹⁰⁷ *Id.* CHIP was originally established in 1984 by Dr. Kenneth R. Pelletier. This third generation of CHIP was established at the University of Arizona Integrative Medicine Center in 2002. The third generation focuses on the clinical and cost-effectiveness of integrative medicine to Corporate America. See CHIP Press Release, *University of Arizona Center for Integrative Medicine Launches Corporate Health Improvement Program*, (January 18, 2005) available at http://www.drpelletier.com/chip/press_release.html.

¹⁰⁸ Arizona Center for Integrative Medicine, Integrative Medicine, <http://integrativemedicine.arizona.edu/about/definition.html>.

¹⁰⁹ *Id.* (Defining Principles of Integrative Medicine); Pelletier Interview, *supra* note 44.

CHIP,¹¹⁰ corporations are very receptive to inclusion of evidenced-based CAM modalities in their wellness programs because their goal is to improve the health of their employees.¹¹¹ Some of the employers with whom Dr. Pelletier is working include: American Specialty Health, Corning, Dow, Ford, GlaxoSmithKline, IBM, Medstat, NASA, Nestle, Pepsi, Pfizer, Prudential, and the University of Texas School of Medicine in Houston.¹¹² CHIP is also working with several collaborating organizations including the Republic of Singapore, Partnership for Prevention, the National Business Group on Health, and the Institute for Health and Productivity Management.¹¹³

CHIP is currently engaged in several interesting integrative medicine research projects. One such project is a randomized clinical trial (RCT) on an "Integrative Medicine Intervention for Back Pain at Ford Motor Company in conjunction with the University of Maryland School of Medicine."¹¹⁴ The hypothesis is that an integrative medicine intervention, when combined with current standard care will produce more positive clinical and cost outcomes than the current standard of care alone.¹¹⁵ This project has three major components: (1) Traditional Chinese Acupuncture; (2) patient educational materials on acute back pain supplemented with individualized patient education services delivered via a toll free telephone number; and (3) the standard Ford Clinic back pain care.¹¹⁶

Another interesting project is the "Tea Intervention for Protection against Oxidative Stress" at a Fortune 500 company. This randomized controlled trial builds upon work by Dr. Hakim

¹¹⁰ Kenneth R. Pelletier, Ph.D., M.D., *supra* note 44.

¹¹¹ Pelletier Interview, *supra* note 44.

¹¹² Corporate Health CHIP, Members, http://integrativemedicine.arizona.edu/chip/chip_members.html.

¹¹³ *Id.*

¹¹⁴ CHIP, Current Research Projects, http://integrativemedicine.arizona.edu/chip/chip_projects.html [hereinafter CHIP Current Research Projects].

¹¹⁵ Dr. Brian M. Berman et al., *An Integrative Medicine Intervention Usual Care for the Treatment of Acute Lower Back Pain at the Ford Motor Company* (abstract on file with the author).

¹¹⁶ *Id.*

evaluating the effect of high consumption of decaffeinated green and black tea on oxidative DNA damage among smokers.¹¹⁷ The Hakim-Pelletier study hypothesizes that "green tea intervention involving individuals at the worksite can modulate the DNA and lipid damage, thereby reducing the risk of developing chronic diseases such as cancer, cardiovascular diseases, and lung disease."¹¹⁸

In evaluating the clinical effectiveness of CAM modalities for inclusion in integrative medicine, Dr. Pelletier has three criteria. He looks to see if the clinical outcomes for the CAM modality are better than the conventional treatment, if the cost-effectiveness of the CAM modality is better than conventional medicine, and if there are any additional benefits with using the CAM modality over conventional medicine (e.g. less invasive procedure or less prescription drug use).¹¹⁹

B. Legislative Efforts to Expand Corporate Wellness Programs

In recognition of the economic benefits that corporate wellness programs provide to employers as well as the public health benefits of such programs, Senator Tom Harkin and Congressman Tom Udall introduced the Healthy Workforce Act of 2007.¹²⁰ The Healthy Workforce Act of 2007 provides a financial incentive to employers to

¹¹⁷ Dr. Iman Hakim & Dr. Kenneth R. Pelletier, *Tea Intervention for Protection Against Oxidative Stress* (abstract on file with the author); CHIP Current Research Projects, *supra* note 114.

¹¹⁸ *Id.*

¹¹⁹ Pelletier Interview, *supra* note 44.

¹²⁰ Senator Tom Harkin introduced S. 1753 in July 2007 and Congressman Udall introduced H.R. 3717 in October 2007. Health Workforce Act of 2007, S. 1753, 110th Cong. (2007); Healthy Workforce Act of 2007, H.R. 3717, 110th Cong. (2007). Senator Harkin reintroduced the Healthy Workforce Act of 2009 in April 2009. Healthy Workforce Act of 2009, S. 803, 111th Cong. (2009). Companion legislation was also introduced in the House as H.R. 1897. Healthy Workforce Act of 2009, H.R. 1897, 111th Cong. (2009). The provisions of S. 803 are substantially similar to those of S. 1753. Both of the healthcare reform bills introduced in the Senate also recognize the benefits of corporate wellness programs to employers and the public health. Affordable Health Choices Act, S. ___, 111th Cong. §§ 326, 334 (2009); SEN. MAX BAUCUS CHAIRMAN OF THE COMMITTEE ON SENATE FINANCE, MODIFICATIONS TO THE CHAIRMAN'S MARK AMERICA'S HEALTHY FUTURE ACT OF 2009 at 20 (Sept. 22, 2009) [hereinafter MODIFIED CHAIR'S MARK]. House Bill 3200 does not address workplace wellness. America's Affordable Health Choices Act, H.R. 3200, 111th Cong. (2009).

offer wellness programs.¹²¹ In particular, the Healthy Workforce Act of 2007 amends the Internal Revenue Code to allow employers a 50% tax credit for the costs of providing a qualified wellness program to their employees.¹²² A business that establishes a new wellness program may receive the tax credit for 10 years.¹²³ A qualified wellness program means “a program which consists of any 3 of the 4 wellness program components” and is certified by the Secretary of Health and Human Services in coordination with the Director of the Center for Disease Control and Prevention.¹²⁴ The four wellness program components include (1) a Health Awareness Component which includes health education and health screening;¹²⁵ (2) an Employee Engagement Component which has two aspects: (a) creation of a committee to actively engage employees in worksite wellness programs through worksite assessments, program planning, delivery, evaluation, and improvement efforts, and (b) an effort to track employee participation;¹²⁶ (3) a Behavior Change Component designed to change employee lifestyles “to encourage healthy living through counseling, seminars, on-line programs, or self-help

¹²¹ S. 1753, 110th Cong. § 3 (a) (Sec. 450(a)(1)).

¹²² *Id.* Both the Senate HELP Committee’s Affordable Health Choices Act and the Senate Finance Committee’s America’s Healthy Future Act of 2009 provide mechanisms to increase access to comprehensive, evidence-based workplace wellness programs. The Senate Finance bill provides funding for 5 year grants to small employers who do not have a program upon enactment of the bill. MODIFIED CHAIR’S MARK – WORKPLACE WELLNESS GRANTS, *supra* note 120, at 20. The HELP bill provides for educational campaigns to explain the benefits of such programs to employers and employees; provides for technical assistance to all employers to evaluate their programs; and provides for workplace demonstration projects to “expand the science base for effective prevention and health promotion approaches in the workplace.” Affordable Health Choices Act, S. ___, 111th Cong. § 326. Both bills also permit incentives to be offered to employees who voluntarily participate in wellness programs that are reasonably designed to promote health or prevent disease. Affordable Health Choices Act, S. ___, 111th Cong. § 334; MODIFIED CHAIR’S MARK, STRENGTHENING WORKPLACE WELLNESS PROGRAMS, *supra* note 120, at 20.

¹²³ S. 1753, 110th Cong. § 3 (a) (Sec. 450 (e)(4)(A) and Sec. 450 (e)(4)(B)). Employers that had a wellness program at the time of enactment of the Healthy Workforce Act of 2007 that meets the statutory requirements can receive a tax credit for 3 years.

¹²⁴ S. 1753, 110th Cong. § 3 (a) (Sec. 450 (b)(1)(A)).

¹²⁵ S. 1753, 110th Cong. § 3 (a) (Sec. 450 (c)(1)(A) and Sec. 450 (c)(1)(B)).

¹²⁶ S. 1753, 110th Cong. § 3 (a) (Sec. 450 (c)(2)(A) and Sec. 450 (c)(2)(B)).

materials”¹²⁷ relating to topics such as tobacco use, obesity, stress management, physical fitness, nutrition, substance abuse, depression, and mental health promotion;¹²⁸ and (4) The Supportive Environment Component, which includes on-site policies that promote healthy lifestyles, employee participation incentives, and the opportunity for employees to participate in the management of the wellness program.¹²⁹

C. Combining Legislative Incentives for Corporate Wellness Programs and Recommendations for NCCAM

Legislative initiatives such as the Healthy Workforce Act of 2007 represent a step in the right direction to incentivize expenditure of healthcare dollars on wellness and prevention. The text of the legislation does not limit the wellness programs to conventional medicine. Instead, such programs must have features that are “consistent with evidence-based research and best practices, as identified by persons with expertise in employer health promotion and wellness programs.”¹³⁰ The programs must also include “multiple, evidence-based strategies which are based on the existing and emerging research and careful scientific reviews.”¹³¹ Accordingly, evidence-based CAM modalities could be considered for use in corporate wellness programs. Employers could choose to incorporate CAM modalities proven to be effective into their wellness programs or they could participate in a research project designed to test the hypothesis that a potentially effective CAM modality is *more* clinically and cost effective when integrated with traditional treatment or when compared to traditional treatment alone.

The issue now becomes how we can expand employer opportunities to include integrative medical approaches in their corporate wellness programs. To date, the CHIP program at the University of Arizona provides a model that can be replicated at

¹²⁷ S. 1753, 110th Cong. § 3 (a)(Sec. 450(c)(3)).

¹²⁸ *Id.*

¹²⁹ S. 1753, 110th Cong. § 3 (a) (Sec. 450 (c)(4)).

¹³⁰ S. 1753, 110th Cong. § 3 (a) (Sec. 450 (b)(2)(A)(i)).

¹³¹ S. 1753, 110th Cong. § 3 (a) (Sec. 450 (b)(2)(A)(ii)).

other academic centers. Expansion of CHIP-like opportunities also underscores the importance of NCCAM increasing the number of research opportunities to explore CAM modalities that focus on prevention and wellness. Additionally, NCCAM should conduct outreach to corporate wellness programs to inform them of the results of research that proves that certain CAM modalities are clinically effective or have solid evidence of the possibility of clinical effectiveness. An outreach effort of this nature will also likely increase the number of CAM modalities that are incorporated into corporate wellness programs.

V. CONCLUSION

Healthcare reform is once again a major topic of conversation in the United States. Neither of the reform proposals by the 2008 presidential candidates, former Senate Majority Leader Tom Daschle, nor those released by a congressional chairman with jurisdiction over healthcare reform legislation, address the role of complementary and alternative medicine in healthcare reform. This omission is noteworthy given the significant percentage of Americans that use CAM modalities to prevent future illnesses, pursue wellness, and facilitate health improvement. This article argues that CAM should play a role in healthcare reform in the areas of wellness and health promotion through Corporate Wellness Plans. Such a proposal is consistent with then-Senator Obama's campaign promise as reflected in the Obama-Biden healthcare plan. The Obama-Biden plan promised to expand and reward employer efforts, which promote prevention and strengthen public health through worksite health promotion programs, onsite clinical prevention services, and the selection of insurance plans designed to accomplish the same ends.¹³²

Corporations in the United States are establishing corporate wellness plans to provide public health benefits because of their significant economic interest in promoting and maintaining workforce health. Corporate wellness plans provide a means to prevent and control chronic diseases, which account for the lion's

¹³² See Obama-Biden Health Plan, *supra* note 79.

share of healthcare expenditures in the United States. These programs can also reduce absenteeism and increase productivity of employees.

CAM can play a role in the provision of care through corporate wellness plans, and the University of Arizona's Corporate Health Improvement Program (CHIP) provides an example of how to include CAM modalities into such plans. This collaborative research and development program between the University of Arizona College of Medicine and select Fortune 500 companies or governmental organizations seeks to investigate the clinical effectiveness and cost-effectiveness of alternative medicine to incorporate with conventional medicine into corporate wellness plans. Research through the CHIP programs is important given the limited availability of evidence-based research to show the efficacy, safety, and cost-effectiveness of many CAM modalities.

A comprehensive system to incorporate CAM into wellness plans can be developed by combining CHIP-like initiatives with initiatives by NCCAM. Increased NCCAM funding to CHIP-like programs can expand the research opportunities to explore CAM modalities that focus on prevention and wellness. Additionally, NCCAM should regularly disseminate to corporate wellness plans the results of research that prove certain CAM modalities are clinically effective or have solid evidence of the possibility of clinical effectiveness. This will also facilitate the incorporation of CAM modalities into corporate wellness plans.

Proposed legislation like the Healthy Workforce Act of 2007 provides a means to expand opportunities for employers to include integrative medical approaches into their corporate wellness plans. Additionally, the Healthy Workforce Act of 2007 provides a financial incentive to employers to offer wellness programs. Employers who establish a qualified wellness plan receive a 50% tax credit for the costs of providing the plan. Moreover, the Healthy Workforce Act supports wellness programs that use evidence-based strategies which are based on existing and emerging research and careful scientific reviews.



Content downloaded/printed from

[HeinOnline](#)

Mon Oct 28 15:07:18 2019

Citations:

Bluebook 20th ed.

Gwendolyn Roberts Majette, Healthcare Reform & the Missing Voice of Complementary and Alternative Medicine, 10 Hous. J. Health L. & Pol'y 35 (2010).

ALWD 6th ed.

Gwendolyn Roberts Majette, Healthcare Reform & the Missing Voice of Complementary and Alternative Medicine, 10 Hous. J. Health L. & Pol'y 35 (2010).

APA 6th ed.

Majette, G. (2010). Healthcare reform the missing voice of complementary and alternative medicine. Houston Journal of Health Law and Policy, 10(1), 35-[vi].

Chicago 7th ed.

Gwendolyn Roberts Majette, "Healthcare Reform & the Missing Voice of Complementary and Alternative Medicine," Houston Journal of Health Law and Policy 10, no. 1 (2010): 35-[vi]

McGill Guide 9th ed.

Gwendolyn Roberts Majette, "Healthcare Reform & the Missing Voice of Complementary and Alternative Medicine" (2010) 10:1 Houston J of Health L & Policy 35.

MLA 8th ed.

Majette, Gwendolyn Roberts. "Healthcare Reform & the Missing Voice of Complementary and Alternative Medicine." Houston Journal of Health Law and Policy, vol. 10, no. 1, 2010, p. 35-[vi]. HeinOnline.

OSCOLA 4th ed.

Gwendolyn Roberts Majette, 'Healthcare Reform & the Missing Voice of Complementary and Alternative Medicine' (2010) 10 Hous J Health L & Pol'y 35

Provided by:

Cleveland-Marshall College of Law Library

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

Use QR Code reader to send PDF to your smartphone or tablet device

